

REC'D 12 AUG 2004

PCT 10/535488

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT  
(PCT Article 36 and Rule 70)

Applicant's or agent's file reference F7680(V)	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/EP 03/12033	International filing date (day/month/year) 29.10.2003	Priority date (day/month/year) 18.11.2002
International Patent Classification (IPC) or both national classification and IPC A23D7/00		
Applicant UNILEVER N.V. et al.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.



2. This REPORT consists of a total of 6 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 5 sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the opinion
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand  22.03.2004	Date of completion of this report  11.08.2004
Name and mailing address of the international preliminary examining authority:   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer  Georgopoulos, N  Telephone No. +49 89 2399-2634  

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. **PCT/EP 03/12033**

**I. Basis of the report**

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

**Description, Pages**

1-3, 5, 6, 8-14 as originally filed  
4, 4a, 7, 7a filed with telefax on 29.07.2004

**Claims, Numbers**

1-19, 20 (part) as originally filed  
20 (part), 21-26 filed with telefax on 29.07.2004

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).  
☐ the language of publication of the international application (under Rule 48.3(b)).  
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority in written form.  
☐ furnished subsequently to this Authority in computer readable form.  
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.  
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:  
☐ the claims, Nos.:  
☐ the drawings, sheets:

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT**

International application No. **PCT/EP 03/12033**

5. ☒ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

*(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)*

**see separate sheet**

6. Additional observations, if necessary:

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Yes: Claims	1-22, 25-26
	No: Claims	23-24
Inventive step (IS)	Yes: Claims	19, 22, 26
	No: Claims	1-18, 20-21, 23-25
Industrial applicability (IA)	Yes: Claims	1-26
	No: Claims	

**2. Citations and explanations**

**see separate sheet**

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

---

International application No. PCT/EP03/12033

**Item I**

- 1 The amendments filed with the fax dated 29.07.04 do not meet the requirements of Art.34 (2) (b) PCT, as they go beyond the disclosure in the international application as filed. The amendments concerned are as follows:

- 1.1 The insertion of the formulation "of 10-90% wt (preferably 15-80% wt) of triglycerides of fatty acids, wherein ... and 10-90% wt (preferably 20-85%)" in present claim 23

The application as originally filed does not disclose the contents of the emulsion or dispersion that is prepared according to present invention's process (see page 7, lines 1-3 of the description as originally filed as well as originally filed claim 23). Therefore, the aforementioned amendment represents a specific disclosure not contained in the originally filed application documents.

- 1.2 The insertion of the formulation "of 10-90% wt (preferably 15-80% wt) of triglycerides of fatty acids, wherein ... and 10-90% wt (preferably 20-85%)" on page 7, lines 8-12 of the present description

See section 1.1 above.

- 2 Thus, the international examination will be based on the originally filed application documents.

**Item V**

- 3 Reference is made to the following documents:

D1: AU-B-726 767

D2: US-A-5 718 938

D3: WO-A-94 16572

- 4 The subject-matter of present independent claim 23 as well as that of present dependent claim 24, is not novel (Art.33 (2) PCT).

- 4.1 Each one of the documents D2 and D3 discloses a process comprising the two steps of present independent claim 23 (see column 4, line 63 - column 7, line 19 and claims 1, 7, 9, 10 and 11 of D2 as well as page 6, line 1 - page 8, line 28 and claims 1, 4, 8

**INTERNATIONAL PRELIMINARY  
EXAMINATION REPORT - SEPARATE SHEET**

International application No. PCT/EP03/12033

and 9 of D3). Here it should be noted that:

a/ the "drying" step of present independent claim 23 is so broadly formulated that it also includes the baking steps of D2 and D3; and

b/ the formulation "for manufacturing the particulates according to claims 1-19" in present independent claim 23 cannot be regarded as a limitation to the process steps of said claim, as the aforementioned particulates are not involved in any of said steps and therefore said formulation merely represents the aim of said process.

4.2 Moreover, each one of the documents D2 and D3 discloses a process as in present claim 24 (see the passages of D2 and D3 under section 4.1 above).

5 It appears that present dependent claim 25 does not contain technical features that would establish novelty and / or inventive step (Art.33 (3) PCT) for the subject-matter of present independent claim 23.

6 The subject-matter of present independent claims 1, 19, 20 and 26 is novel (Art.33 (2) PCT), for the following reasons:

6.1 None of D1-D3 discloses particulates as in any one of present claims 1, 19, 20 and 26. Furthermore, none of said documents discloses a creamer, whitener or cream alternative as claimed in present claim 19 (see page 2, line 17 - page 3, line 30; example 3; claims 1, 6 and 10 of D1; column 1, lines 31-35; column 4, line 63 - column 7, line 19; claims 1, 7, 9, 10 and 11 of D2; and page 4, lines 30-37; page 6, line 1- page 8, line 28; claims 1, 4, 8 and 9 of D3).

7 However, the subject-matter of any one of present independent claims 1 and 20 would be obvious to the person skilled in the art in regard of the documents D1-D3 (taken alone or in combination) and the technical knowledge of the person skilled in the art: the ice cream coating composition of D1, the puff pastry margarine of D3 as well as the bakery dough of D2 can be seen as "technical equivalents" to the particulates of present claim 1 and the composition of present claim 20. Here, it should be noted:

a/ nothing in said independent claims shows that either the aforementioned particulates or the aforementioned composition represents a creamer;

b/ it is because the term "particulates" is very broad that it can be regarded by the skilled person as a technical equivalent to the ice cream coating composition of D1,

the puff pastry margarine of D3 as well as the bakery dough of D2.

- 7.1 It appears that present dependent claims: a<sub>1</sub>/ 2-18; and b / 21, do not contain technical features that would establish novelty and / or inventive step (Art.33 (3) PCT) for the subject-matter of present independent claims: a<sub>2</sub>/ 1; and b<sub>2</sub>/ 20, respectively.
- 7.2 However, present dependent claim 22 could establish an inventive step for present independent claim 20, as it would not be obvious to the person skilled in the art in regard of D1-D3 (taken alone or in combination) to provide a soup- or sauce concentrate with a low trans-unsaturated fatty acid content.
- 8 The subject-matter of present independent claim 26 involves an inventive step (Art.33 (3) PCT) as it would not be obvious to the person skilled in the art in regard of D1-D3 (taken alone or in combination) to provide a liquid pasty sauce, soup or concentrate of such a sauce or soup with a low trans-unsaturated fatty acid content: D1 discloses a flexible ice cream composition, D2 a batter, a dough or baked goods and D3 a puff pastry margarine.
- 9 Moreover, the subject-matter of present independent claim 19 would not be obvious to the person skilled in the art in regard of the documents D1-D3 (taken alone or in combination), as none of said documents discloses or suggests the use of the particulates of present independent claim 1 in a creamer, whitener or cream alternative as claimed in present claim 19 (see the passages of D1-D3 as under section 6.1 above) in order to attain a creamer, whitener or cream alternative which is low in trans-unsaturated fatty acids, exhibits good organoleptic and physical properties and has a low lauric acid content (see also page 3, lines 1-11 of the present description).
- 10 The subject-matter of present claims 1-26 is susceptible of industrial application in the field of food industry (Art.33 (4) PCT).
- 11 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents D1-D3 is not mentioned in the description, nor are these documents identified therein.